Supreme Court, U.S
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No. 03-392

IN THE

Supreme Court of the United States

GEORGE PATAKI, Governor of the State of New York, *et al.*,

Petitioners,

v.

THE SARATOGA COUNTY CHAMBER OF COMMERCE, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF

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ARGUMENT

In their opposition to the petition for certiorari, respondents Saratoga County Chamber of Commerce, Inc., et al. (respondents in action number one, *Saratoga County Chamber of Commerce, Inc., et al. v. George Pataki, et al.*)[1] wrongly assert that the sovereign immunity of the St. Regis Mohawk Tribe was not compromised by the decision of the New York Court of Appeals. Respondents argue that the Court of Appeals' decision affects only future compact approvals, noting that they never sought to close the Tribe's casino. Brief in Opp. at 1-2. Regardless of how they characterize the relief they sought, respondents ignore the Court of Appeals' affirmation of the lower court's declaration that the 1993 tribal-state gaming compact, pursuant to which the Tribe operates its casino, was void and unenforceable (App. A, 62a; App. B, 74a; App. C, 85a).[2] Moreover, the Court of Appeals recognized that "a declaration that the 1993 compact violates the State Constitution" would make the casino operation illegal and also that the Tribe's "interests are certainly affected by this litigation." (App. A, 8a, 19a). Finally, during the argument in the Court of Appeals, respondents in the second action repudiated the Appellate Division's statements that they sought purely prospective relief and asked the Court of Appeals to affirm the declaration that the 1993 compact was void and unenforceable. (USET App. A, 31a-33a, 35a, 41a).[3]

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1. Respondents Wright and Seabrook (respondents in action number two, *Keith L. Wright and Larry B. Seabrook v. George Pataki, et al.*) did not file a brief in opposition to the petition for certiorari. In the interests of simplicity, respondents in action number one will hereinafter be referred to as "respondents."

2. References to "App." are to the appendices to the petition for certiorari.

3. References to the "USET App.", are to the appendices to the brief amicus curiae of the United South and Eastern Tribes, Inc. in support of the petition for certiorari.

Consequently, respondents' contention that the Tribe's sovereign immunity was not compromised because the decision affected only future casino approvals is erroneous.

Respondents' assertion that the decision of the Court of Appeals does not raise a federal question, Brief in Opp. at 3-6, is also incorrect. Before addressing respondents' state constitutional claims, the Court of Appeals rejected petitioners' assertion that the action must be dismissed because the Tribe was an indispensable party whose sovereign immunity precluded its joinder. In concluding that the Tribe could have waived its immunity and joined this action, App. A, 19a-23a, the court disregarded the Tribe's immunity from suit, an immunity that this Court has held to be privileged by federal law "from diminution by the States." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 891 (1986) (holding that a state law conditioning the tribe's access to the state courts as a plaintiff on its blanket waiver of sovereign immunity "is unduly intrusive on the Tribe's common law sovereign immunity, and thus on its ability to govern itself according to its own laws"). As described in detail in the petition for certiorari, the Court's disregard of tribal sovereign immunity below squarely conflicts with the holdings of the Second, Seventh, Ninth, Tenth and District of Columbia Circuits as well as the New Mexico Supreme Court. Petition for Certiorari at 7-13.

Accordingly, we respectfully urge this Court to grant the petition for certiorari to resolve this conflict and to vindicate the important federal interests in tribal self-government and sovereign immunity ignored by the Court of Appeals.

CONCLUSION

For the foregoing reasons, petitioners respectfully urge this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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